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THE CORPORATION TRUST COMPANY AND AFFILIATED COMPANIES

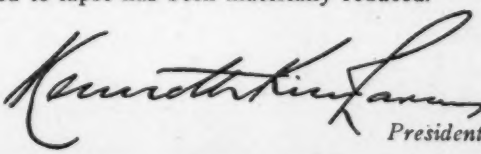
The policy of The Corporation Trust Company in all matters relating to the incorporation, qualification, statutory representation, and maintenance of corporations, is to deal with members of the bar, exclusively.

Process on Behalf of Foreign Corporation

The United States Supreme Court, in *State of Washington ex rel. Bond & Goodwin & Tucker, Inc. v. Superior Court, etc.*, decided May 8, 1933, holds that service of process on behalf of a foreign corporation on Secretary of State who does not notify corporation, there being no statutory mandate for such notice, is valid. The service in question on behalf of a Delaware corporation, then withdrawn from Washington, was on the Washington Secretary of State who made no attempt to notify the corporation. The service was according to applicable statutory provisions; the statutes make no provision for notice by the Secretary of State to the company. By going into the State the Company accepted the conditions (that is, all reasonable conditions) prescribed by Washington. The Court holds there was no denial of due process, as contended, and, on another contention, no denial of equal protection. Report of decision below in The Corporation Journal for January and for February, 1933, at pages 304 and 327, respectively.

Reviving Lapsed Delaware Charters

On Page 414, will be found the text of a new Delaware law (April 21, 1933) by the terms of which the cost of reinstating a Delaware corporation whose charter has been allowed to lapse has been materially reduced.



President.

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The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August, and September. Its purpose, is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

When it is desired to preserve the Journal in a permanent file, a special and very convenient form of binder will be furnished at cost ($1.50).

Contents for June

The Admission of Foreign Corporations

By J. E. Thompson

The Federal Constitution provides that, "citizens of each state shall be entitled to all privileges and immunities of citizens in the several states." By virtue of this provision, individual residents of a state may engage in business in any other state, and are "entitled to all privileges and immunities" granted to citizens of the state wherein the business is done. However, in the case of corporations, every state of the Union has now adopted particular restrictions and regulations, applying to the doing of intrastate business by foreign corporations within its borders; and that such treatment is not discriminatory under the above provisions of the Federal Constitution was decided many years ago by the Supreme Court of the United States in the case of Paul v. Virginia, (8 Wallace 168). That case, decided in 1869, held that corporations are not citizens within the meaning of the above constitutional provision, and not being citizens may have regulations placed upon them not applicable to individuals.

On the authority of this case and of still earlier decisions each of the states has enacted laws prescribing the conditions under which foreign corporations are permitted to do intrastate business within its borders. Generally, at each session of a state's legislature, bills are introduced for the purpose of amending old statutes, enacting new ones and further regulating the "doing of business" in the state by foreign corporations.

Statutory penalties for noncompliance are frequently drastic and severe, ranging from inability to enforce contracts, and personal liability of officers, directors and agents, to the fining and imprisonment of agents. The inability to enforce contracts is a vitally important matter to business corporations, and not infrequently are cases decided in which foreign corporations lose thousands of dollars from this reason alone.

A vast amount of statutory and case law has been made covering the doing of business in a state by a corporation foreign thereto, and no corporation should carry on any activities in a foreign state until it has been ascertained, as definitely as possible, whether the activities contemplated are of an intrastate nature or are strictly interstate in character. The distinction between interstate and intrastate business is often difficult to draw, but with the pertinent facts in mind, in any particular case, the decisions will prove to be helpful and a thorough acquaintance with these as well as a knowledge of state foreign corporation law is essential to assure the corporation freedom from difficulties some of which may be of a most serious nature.

Domestic Corporations

Delaware.

Reviving Delaware charters that have become inoperative. On April 21, 1933, the Governor of Delaware approved a bill (Senate Substitute for Senate Bill 107) passed by the Legislature, which, by amendment of the Revised Code, materially reduces the cost of reinstating a Delaware corporation after its charter has been allowed to lapse. The text of the amending law follows:

"SECTION 1. That Section 73 of said Chapter 65 of the Revised Code of the State of Delaware, being 1987, Sec. 73 of said Code, be and the same is hereby amended by striking out the fourth paragraph of sub-section 4 of the said Section 73 and inserting in lieu thereof the following: Any corporation seeking to renew or revive its charter under the provisions of this Act shall pay to the State of Delaware, in lieu of and in full satisfaction of all franchise taxes and penalties thereon due the State of Delaware, a sum equal to all franchise taxes and penalties thereon due at the time its charter became inoperative and void for non-payment of taxes, or expired by limitation or otherwise, but said sum so payable shall not be greater than the amount of tax which would be payable (in accordance with Sec. 71 of this Chapter) on filing an original certificate of incorporation of a corporation having the same amount of authorized capital stock as the corporation seeking to renew or revive its charter had at the time its charter became inoperative and void or expired by limitation or otherwise, and shall present to the Secretary of State, together with its certificate of renewal or revival, proof of such payment to the Tax Department of the State of Delaware.

"SECTION 2. All acts or parts of Acts inconsistent with this Act are hereby repealed to the extent of the inconsistency only."

In Delaware a share of stock is a chattel for the conversion of which an action of trover will lie. It is alleged that certain shares of stock were "casually" lost; that they were found—whether casually or not is not stated, and thereby came into the possession of the defendant; and that demand for return was made and refused. This action of trover followed. Defendant demurred on ground that stock, as distinguished from a certificate representing stock, is not a chattel for the conversion of which an action of trover will lie. The Superior Court of Delaware (New Castle County) overrules the demurrer. It is said that "it must be conceded that corporate stock was incapable of conversion at common law, and is so in this state, which is under the common law, unless by statute it is made personal property that may be taken into possession." Quoting provisions of Section 16 of the Delaware General Corporation Law and Section 95 of Chapter 65 of the Delaware Revised Code, the court says: "Under these statutes shares of corporate stock are not only made personal property, but property that may be identified, attached and sold for the payment of the debts of the owner. So, it may be

said that shares of stock have no longer, in this state, the characteristics that make them incapable of conversion at common law." The defendant sought to make a distinction between a certificate for shares, and shares; the fallacy, there, is pointed out, in that one may be the legal owner of stock even though he has received no certificate, the certificate being evidence, only, of ownership;—"and so, defendant's contention that the company might be liable for conversion where a certificate has been issued but not where no certificate was issued, even though the stock was paid for, cannot be sustained." *Lillian Elizabeth Haskell v. Middle States Petroleum Corporation, etc.*, decided March 22, 1933. Commerce Clearing House Court Decisions Reporting Service, Requisition No. 86746.

Massachusetts.

Redemption of preferred stock of one class, as per contract, corporation being solvent, is not to be restrained by holders of preferred stock of another class, though leaving excess of assets over liabilities (not including capital stock) less than par value of outstanding preferred stock of such other class. Here Class B preferred stock was issued, within the terms of the enabling statutes of Massachusetts, subject to redemption at the option of the holders at par plus accrued and unpaid dividends, subject to certain conditions outlined in the contract (all fully met). Under the option redemption of a large number of the Class B shares has been asked. Class A preferred stock holders sought to prevent the redemption. It is not alleged that anyone, other than the Class A holders, will suffer by the redemption of the Class B stock. The corporation is solvent, and there is no claim otherwise. There is a large surplus of assets over liabilities (exclusive of capital stock). Redemption of a considerable portion of the Class B stock will reduce such surplus, however, to a figure less than the aggregate, at par, of the outstanding Class A preferred stock. "The main contention of the plaintiffs is that it is an implied condition of the issuance of the classes of stock that there shall be no redemption of Class B preferred stock which will leave the corporation in such condition that Class A preferred stock will not be worth par, or will be so reduced in value as the present record would indicate." The Massachusetts Supreme Judicial Court, dismissing the bill, says that that contention cannot be supported. "Enforcement of the agreement may now seem hard to the plaintiffs. But they entered into it without compulsion and of their own choice. Its terms are plain." "In general and unless restrained by valid statutes, competent persons have the utmost liberty of making contracts. Agreements voluntarily made between such persons are to be held sacred and enforced by the courts, and are not to be lightly set aside on the ground of public policy or because as events have turned it may be unfortunate for one party." *Crimmins & Peirce Co. et al. v. Kidder Peabody Acceptance Corporation et al.*, decided April 4, 1933, Commerce Clearing House Court Decisions Reporting Service, Requisition No. 88291.

Michigan.

The seeking by a dissatisfied stockholder of court intervention in management of his corporation. Affirming the decree below dismissing a complaining shareholder's bill the Supreme Court of Michigan says: "It is familiar law that the business affairs of a corporation are managed by the directors, unless stockholders properly intervene. A stockholder may not invoke the intervention of a court without request for action by the corporate officers and refusal by such officers to act, unless the officers are disqualified by misconduct equivalent to a breach of trust, or occupy a relation which prevents an unprejudiced exercise of judgment, and therefore a request for action would be futile. The court of equity has power to intervene and correct abuses practiced by directors of a corporation, and may do so upon a showing that it would be useless to request the corporate officers to take action. The burden, however, rests upon the complaining stockholder, when permitted to bring suit, involving matters intra vires, to show that there has been fraudulent or oppressive mismanagement of the corporate affairs by action of the officers or of the majority stockholders." *Burch v. Norton Hotel Co. et al.*, 246 N. W. 131. Bulkley, Ledyard, Dickinson & Wright, (C. H. L'Hommedieu and R. W. Conder, of counsel), for appellant; Behr & Coolidge, (Fred A. Behr, of counsel), for appellees: all of Detroit.

Montana.

Intervention by stockholders in receivership proceedings. We go solely to the point suggested by the caption. The Supreme Court of Montana says: "While intervention by stockholders, in receivership matters of corporations, is not favored and should be denied when they have other remedies, it is within the sound discretion of a court to permit such intervention on a proper showing, in order to give the individual stockholder an opportunity to be heard on the application. A showing made to the effect that an action is not being defended in good faith by the officers of the corporation, that the alleged ground for the appointment of a receiver does not exist, or that the directors are acting in fraud of the stockholders' rights, is sufficient to invoke the discretion of the court to allow intervention to protect the interest of the intervenor and other stockholders from unfounded claims." The court finds that here the complaint in intervention is sufficient and that there was no abuse of discretion in permitting the filing thereof. The intervenor appealed from an order refusing to vacate an order appointing a receiver. Reversed. *Scholefield et al. v. Merrill Mortuaries, Inc.* (*Shoemaker, Intervenor*), 17 P. (2d) 1081. Hall & McCabe, of Great Falls, and Howard A. Johnson, of Helena, for appellant. Murch & Wuerthner and Church & Jardine, all of Great Falls, for respondents.

Nebraska.

When one deals with an entity as a corporation he is estopped to deny its existence as such. Here, in an action by a French organi-

zation, called Societe Titanor and alleging that it is a corporation, on appeal from a judgment in its favor, one error urged is the overruling of defendant's motion for judgment because the evidence failed to prove that plaintiff is a corporation. There was little, and no conclusive, evidence in that direction. Affirming the judgment, the Supreme Court of Nebraska says: "The evidence does not give a translation of the word 'Societe,' but the facts above set out show clearly that the defendant knew that plaintiff claimed to be a corporation. The invoice was so given, and defendant recognized plaintiff as a corporation and knew it was dealing with plaintiff as a corporation. Where a party contracts with a company and recognizes and deals with it as a corporation, he is estopped to deny its corporate existence after receiving the benefit of the contract." *Societe Titanor v. Paxton & Vierling Iron Works*, 247 N. W. 356. Crofoot, Fraser, Connolly & Stryker, of Omaha, for appellant. Gerald M. Drew and Finlayson, Burke & McKie, all of Omaha, for appellee.

New Jersey.

Purchase on installment basis of its own stock by corporation; insolvency, later; seller is creditor to amount of unpaid installments. Here, by agreement between a corporation and one of its shareholders, all stockholders agreeing, a sale was made to the corporation, on an installment plan, of a number of its shares owned by one of its shareholders. Before payment in full for the purchased shares the corporation became insolvent; the seller filed proof of claim, as creditor, to the amount of the unpaid installments, with the receivers; on appeal from disallowance, the Court of Chancery of New Jersey sustains the appeal, and allows the claim as that of a general creditor. It was found that at the time the agreement was entered into the company was solvent; that the sale and purchase was intended to be, was considered by all stockholders to be, and in fact apparently was, for the benefit of all the shareholders; and that, so far as appears, the present unfortunate financial situation is in nowise attributable to the transaction. The court says: "It is not intended by anything that has been said herein to intimate that a purchase by a corporation of shares of its own stock would be valid if the then present ability of the corporation to pay its creditors in full was in anywise open to doubt, if, for instance, although then honestly believed to be fully solvent, it should later appear doubtful that the company had in fact been then fully solvent. That situation does not exist here, and no opinion is expressed thereon." *Wolff et al. v. Heidritter Lumber Co.*, 163 A. 140. Samuel Koestler, of Elizabeth, for appellant. Donald H. McLean, of Elizabeth, for receivers.

New York.

Corporation cannot be brought to court by motion to change name of defendant in action. Reversing the court below, which granted a motion to correct the name of the defendant, the New York Supreme Court, Appellate Division, Second Department, says: "The

order substitutes, in the place of the defendant served, a distinct and separate corporation which never had been served with process and which has not been brought within the court's jurisdiction. This may not be done under the guise of correcting a misnomer." *Sammatano v. Brooklyn City R. Co. et al.*, 262 N. Y. Sup. 634. Harold L. Warner, of Brooklyn, for appellant.

North Carolina.

Corporate seal not essential on corporate contract. In the instant case, plaintiff having taken a nonsuit in the trial court and appealed, suit having been brought by an individual on an agreement or contract between him and a corporation, the Supreme Court of North Carolina, finding that the case should have been submitted to the jury and ordering a new trial, says, incidental to the question of the validity of the contract: "The corporate seal was not necessary." *Warren v. Littleton Orange Crush Bottling Co., Inc.*, 168 S. E. 226. Julian R. Allsbrook, of Roanoke Rapids, and Cromwell Daniel, for appellant. George C. Green, of Weldon, for appellee.

Washington.

When separate entities of two corporations are to be ignored. A written guaranty signed by "Seiberling Rubber Company" was given by a Delaware corporation, Seiberling Rubber Company, which is not authorized to do business in, and does no business in, Washington, and which owns all the capital stock of The Seiberling Rubber Company, an Ohio corporation, which is authorized to do business in Washington. Action against the Ohio corporation to recover on the guaranty. After the answer of general denial was filed, plaintiff discovered "apparently for the first time" that the two companies existed and then filed an amended and supplemental complaint alleging certain facts tending to disclose close or complete intercorporate identity between the two. It was found that the officers are identical, that the operations of the two are conducted from the same offices and quarters, that the Delaware corporation owns all the property and equipment where the business is conducted and pays all expenses of upkeep, taxes, rent, etc., of such quarters, and that the businesses of the two are much commingled and interwoven. Judgment against the Ohio company is affirmed by the Supreme Court of Washington. The court says: "Undoubtedly it is the general rule that mere common ownership of the capital stock or interlocking directorates, or like evidences of close association, will not justify the courts in disregarding corporate identities, but where, as here, the identities are so confused and intermingled as to result in probable fraud upon third parties dealing with the corporations or either of them, whether fraud be actually intended or not, then the exception to the rule will apply, and the exception is as well established as the rule itself." *Associated Oil Company v. The Seiberling Rubber Co.*, 19 P. (2d) 940. Arthur M. Harris and John E. Howley, both of Seattle, for appellant. Eggerman & Rosling, of Seattle, for respondent.

Foreign Corporations

Alabama.

On what constitutes doing business in Alabama by a foreign corporation. In this case the Alabama Supreme Court, reversing the court below, finds that the pleas in abatement of the defendant Ford Motor Company, a foreign corporation not licensed to do business in Alabama, presenting the question of jurisdiction, should have been sustained,—that is, that the company was not doing business in the state and that service of process on its behalf on an individual as agent for the company was without force. The extent and character of the activities, if any, of the company in the state, and the status of the alleged agent in relation to the company, do not appear, there being no statement of facts. There are citations, however, with some discussion thereon, to an exceptionally large number of decisions on several phases of the question as to what constitutes the doing of business in a state by a corporation that is foreign to such state. *Ford Motor Co. v. Hall Auto Co., and Ford Motor Co. v. Reid Motor Co.*, decided March 30, 1933, Commerce Clearing House Court Decisions Reporting Service, Requisition No. 87285.

Arkansas.

Constructive service on foreign corporation having an appointed agent in state for process is invalid. Petition for writ of prohibition against proceeding in the trial of an Arkansas suit against a foreign corporation having an appointed agent in the state for service of process, constructive service (warning order, on affidavit, issued and published), on the ground that such service was invalid. The Supreme Court of Arkansas granting the writ, the lower court having erroneously held that a subsequent personal service was valid when in fact such summons was not served before the return date thereof, sustains the court below in its holding that the original constructive service was void. In this regard the court says: "The trial court correctly ruled that the attempted constructive service was void because the affidavit failed to state that petitioner had no agent in this state upon whom process might be served, when, as a matter of fact, it has appointed an agent in this state for that purpose. Section 1159 of Crawford and Moses Digest makes such a requirement when an agent has been appointed as provided in Section 1151 of Crawford and Moses Digest. After the appointment of an agent in accordance with said Section 1151, a foreign corporation can be proceeded against only by personal service upon the agent and not by constructive service upon it." *J. H. Hamlen & Son v. Allen*, 57 S. W. (2d) 1046. Rose, Hemingway, Cantrell & Loughborough of Little Rock, for petitioner.

North Carolina.

Service of process on alleged "local agent" of unlicensed foreign corporation, on behalf of the corporation, held invalid. The sole

Contrasts in E

A manufacturing corporation qualified itself to do business in Alabama and named the manager of its branch as corporate representative. Three or four years later the manager was transferred. No one thought of his being registered as the company's corporate representative and so the company became without such representation and subject to a fine of $1,000.00 for each separate transaction in the state!

This condition went on for several years, during any one of which the company would have said it was getting along famously. Then one day the situation came to the attention of the attorney-general and the supposed "economy" of appointing business employes as the corporate representatives was stripped of its disguise.

The sum exacted by the state before the company's corporate rights were restored would have paid for proper corporate representation for many years.

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The officers of a certain corpo ration qualified in many state thought they could save mone by delegating corporate repr sentation to a business employe in each state and supervision b an officer at the home office. Thus they saved, it was said, fees of the company's lawye and the cost of paid corporate representation.

In one of the states in which qualified an annual report is re quired and also an income tax return. The company's employe and his superior thought that when they had filed the first they had covered the second. The time limit went by and sometime later the company was astounded and pained to find that its license to do business in the state had been cancelled!

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"On September 27, 1932," writes a Delaware corporation doing business in many states, in a letter to The Corporation Trust Company, "your New York office issued a letter to the companies represented by you, calling attention to the decision of the

question here presented and decided is—was the one on whom process was served a "local agent" of the defendant? If he was, the service was good. The North Carolina Supreme Court, affirming the judgment below, holds that he was not a "local agent." "He is a nonresident and was 'transiently in this State' on a special and restricted mission; he went to New Bern (where, apparently, he was served) on 27 October and on the same day 'departed to perform similar duties,' as his employer had directed. The defendant has never had any property or office or place of business in this State." *J. B. Blades Lumber Company v. The Finance Company of America at Baltimore,* decided March 8, 1933, Commerce Clearing House Court Decisions Reporting Service, Requisition No. 86803.

North Dakota.

Determination of where cause arose, in action against an unqualified foreign corporation. Action by a resident of North Dakota against a steamship corporation, foreign to North Dakota, organized under the laws of the United Kingdom of Great Britain and Northern Ireland, on account of alleged breach of a contract for transportation from New York to Norway and return. The ticket was bought in Fargo from one who, of course, was a representative or agent of the company. Service of summons was on such agent. For the service to be valid, under the circumstances here, it must develop that the foreign corporation has property within the State or that the cause of action arose therein. It was not shown that the company had property in North Dakota. The Supreme Court of North Dakota, affirming the order below quashing the attempted service of process on the company, says: "We need not concern ourselves as to whether the contract was made in Fargo or made in New York. It is clear it was not to be performed in this state." And, citing and quoting from cases on which it relies, and differentiating others, the court holds that the place where performance is to be had is the place of any breach because it is there that the contract is broken, and so that the cause of action arises where the one required to perform fails to perform which in this case was not in North Dakota. *Brevick v. Cunard S. S. Co., Ltd., et al.,* 247 N. W. 373. Burdick, Burk & Burdick, of Fargo, for appellant. Nilles, Oehlert & Nilles, of Fargo (Lord, Day & Lord, of New York City, of counsel), for respondent.

Washington.

On interfering with internal affairs of a foreign corporation. The Washington Supreme Court affirms the interlocutory order of the court below directing the defendant, a former president and director of the plaintiff corporation, to deposit with the clerk of the superior court certain records and papers allegedly belonging to plaintiff, for inspection by parties to the action and others having corporate interest in the plaintiff. Plaintiff is a Nevada corporation; its mining

property rights are wholly within California; its activities have been almost entirely within Washington (directors meetings and sales of stock—to others in Washington by the defendant); its directors and officers have at all times been residents of Washington. The court says, to the contention that the order should be reversed for want of jurisdiction because the controversy involves the internal affairs of a foreign corporation: "We think the answer is found in the fact that all the parties to the action reside in this state; that the whole of the subject-matter of the action is in this state; that practically all of the corporate activities of the plaintiff have, since its organization, been in this state; and that all of its officers and stockholders reside in this state. Surely, under such conditions, our courts should not refuse to entertain this action." *General Sherman Consolidated Gold Mines, Ltd., Respondent, v. E. H. Burris,* decided March 6, 1933, Commerce Clearing House Court Decisions Reporting Service, Requisition No. 86438.

Wisconsin.

Service of process on behalf of foreign corporation on officer of corporation in state on corporation's business. In The Corporation Journal for February, 1933, at page 327, it was said: "Wisconsin treats as present within its boundaries a foreign corporation when it is doing business there. Service of process on such corporation may be made, as circumstances warrant, on the secretary of state or on an agent designated for the purpose, or on the corporation's agent in charge, or on an officer who is within the state for the purpose of transacting business for the corporation and who is vested with authority to transact such business within the state, but then only if the corporation has property within the state, or the cause of action arose within the state, or the cause of action exists in favor of a resident of the state. Here service was made on an officer of a Delaware corporation, not licensed to do business in Wisconsin, when he was in Wisconsin for the specific purpose of attempting to compose, with a resident of the state, a controversy arising by virtue of a default in payment on the corporation's bonds. In connection with proceedings by the corporation for a writ of prohibition the Wisconsin Supreme Court holds the service good." (245 N. W. 194). On appeal, the United States Supreme Court reverses. Referring to and quoting from its prior holdings the court says that in order to hold an unlicensed foreign corporation responsible under the process of a local court the record must disclose that it was carrying on business in the state at the time of attempted service, and that the business must be of such nature and character as to warrant the inference that the corporation has subjected itself to the local jurisdiction, and is by its duly authorized officers or agents present within the state or district when service attempted,—and then: "Opinions here in recent causes sanctioning and applying this general rule show plainly enough, we think, that the appellant Corporation was not present

within the jurisdiction of Wisconsin as required." *Consolidated Textile Corporation v. Gregory,* Judge, 53 S. Ct. 529. Eldon Bisbee, of New York City, and Suel O. Arnold and Louis A. Lecher, both of Milwaukee, for appellant. Morris Karon and Walter L. Gold, both of Milwaukee, for appellee.

TAXATION

Illinois.

Minimum franchise tax provisions held to be valid. In The Corporation Journal for December, 1932, at page 281, was reported the original decision of the Illinois Supreme Court in this case, holding, reversing the court below, that the minimum tax provision (Section 107) of the Illinois corporation franchise tax act is unconstitutional. There we said: "The Illinois statutes provide (Sec. 105 of the Corporation Act) for an annual license fee or franchise tax on a foreign corporation admitted to do business within the state (indeed, on a domestic corporation, also) equal to 5 cents on each $100 'of the proportion of its issued capital stock, or amount to be issued at once, represented by business transacted and property located' in Illinois, such fee or tax, however, in no case to be less than would be required under the section of the statutes (Sec. 107, of the Corporation Act) providing for the imposition of a franchise tax on a foreign corporation admitted to do business in the state (and again, indeed, on a domestic corporation, also) but having no property located in Illinois and transacting no business therein. The latter section imposes a graduated fee or tax on a bracketed sliding scale basis the amount thereof being dependent on the amount of the issued capital stock, with a maximum of $1,000 in the case of a corporation with issued capital stock in excess of $20,000,000. The plaintiff-appellant here, a corporation foreign to Illinois, having a large capitalization, but doing little business in Illinois and having but a small amount of property therein, would be subject to a tax for the year 1929 of $130.25 under Section 105, except that its tax is not to be less than as computed under Sec. 107. Under Sec. 107 its tax is $1,000 (as the corporation is in the 'excess of $20,000,000' bracket), and a tax in that amount was assessed against it." On April 22, 1933, on rehearing, the Illinois Supreme Court, reversing itself, two justices dissenting, holds that the taxing act "is not open to the constitutional objections urged against it," and affirms the decree of the circuit court sustaining the tax. *St. Louis Southwestern Railway Co. v. Stratton, Sec'y of State of Illinois,* Commerce Clearing House Court Decisions Reporting Service, Requisition No. 74622-A.

Sales Tax Act held unconstitutional. The Illinois Sales Tax Act imposing a tax on persons engaged in selling tangible personal property at retail (for the period April 1, 1933 to July 1, 1935) measured by gross receipts from such sales, the rate being 3%, is held by the Illinois Supreme Court (May 10, 1933), to be violative of that pro-

vision of the state constitution which authorizes the imposition of occupation taxes by general law, provided that any such tax be uniform as to the class on which it operates, in that, by declaring farm products or farm produce sold by the producers thereof, and motor fuel (as defined in the Illinois "Motor Fuel Tax Law") not to be tangible personal property, it, by indirection, relieves the sellers of such from the burden of the tax, and so is not uniform in its application to the class on which it operates. The court finds the tax to be an occupation tax, to be imposed on a single class, namely, on persons engaged in the business of selling tangible personal property at retail; producers of farm products and produce selling such, and those selling motor fuel, at retail, belong to that class; there is no proper basis for excluding them; uniformity is lacking. The attempted appropriation of the proceeds of the tax is held to be contrary to the provisions of the state constitution, also. Other contentions raised against the taxing act are held to be without force. It was not necessary for the court to determine whether or not any provision of the Federal Constitution is violated by the terms of the Act. The entire law falls. *Winter v. Barrett et al.*, Commerce Clearing House Court Decisions Reporting Service, Requisition No. 90455.

New York.

Changes in rates and basis for New York stock transfer tax. On and after June 1, 1933, transfers of stock that are subject to the New York stock transfer tax are taxable at 3 cents per share whether the stock be of par value or of non-par value, unless the shares involved in the transfer were sold for $20.00 or more per share, in which case the tax it at the rate of 4¢ per share whether of par value or of non-par value. (Chapter 643, approved by the Governor, May 1, 1933, effective June 1, 1933.)

Wyoming.

State license tax on withdrawing, for use, gasoline brought from without the state for storage and used, when withdrawn, in interstate commerce, held valid. A Delaware corporation, operating airplanes in and out of Wyoming, purchases gasoline outside the state, has it shipped to its airports in Wyoming where it is stored and thereafter withdraws it from its storage tanks for use in its planes as occasion requires. To the extent of such gasoline as is used by the corporation in its planes in interstate commerce objection was made to the imposition of a state license tax applied by the state authorities to the stored gasoline as it is withdrawn from the tanks at the airports and placed in the planes. The United States Supreme Court, reversing the court below, holds the tax valid, it not being an unconstitutional burden on interstate commerce, as applied, the decision being confined to that question. The court says that "A State may validly tax the 'use' to which gasoline is put in with-

drawing it from storage within the State, and placing it in the tanks of the planes, notwithstanding that the ultimate function is to generate motive power for carrying on interstate commerce. Such a tax cannot be distinguished from that considered and upheld in *Nashville, Chattanooga & St. Louis Ry. v. Wallace*" (The Corporation Journal for April, 1933, page 379). *Helson v. Kentucky*, 279 U. S. 245 (The Corporation Journal for June, 1929, page 448) relied on by the respondent as showing that as the statute is written, the tax is one on the consumption of gasoline in propelling its airplanes in interstate commerce and so is invalid, is distinguished by the court; there, a Kentucky statute taxing the use of gasoline was applied to that purchased and placed in the tanks of a ferry boat outside the state for use in operating it in interstate commerce. But, says the court, the officers in Wyoming, charged with the enforcement of the questioned tax act are giving to it no such application, nor is it suggested that they will. "In the circumstances, no case is presented, either by pleadings or proof, calling on a federal court of equity to rule upon the correctness of some other construction which may never be adopted by the state administrative officials or by the state courts." *Edelman, State Treasurer, et al. v. Boeing Air Transport, Inc.*, 53 S. Ct. 591. James A. Greenwood, George W. Ferguson, and Richard J. Jackson, all of Cheyenne, for petitioners.

Directors and Officers

of

Commerce Clearing House, Inc.

At a meeting of the stockholders of Commerce Clearing House, Inc., on April 24, 1933, the men here named were elected directors of the company for the year: George L. Briscoe, William KixMiller, Norman J. MacGaffin, B. Stafford Mantz, Kenneth K. McLaren, Joseph P. Murray, Raymond Newman, Carroll C. Robertson, Charles J. Ruebling, Justus L. Schlichting, and William R. Watson. The directors then elected officers as follows: Raymond Newman, Chairman of the Board; Justus L. Schlichting, President; William R. Watson, Vice-President; Charles J. Ruebling, Secretary; B. Stafford Mantz, Treasurer; and George L. Briscoe, Comptroller. William KixMiller was named as Counsel for the corporation.

CORPORATE MEETINGS HELD

During the past few weeks meetings of the corporations named below, among many others, have been held at some one of the offices of The Corporation Trust Company.

Certainteed Products Corporation
Motor Products Corporation
Northern States Power Company
The Long-Bell Lumber Corporation
Standard Power & Light Corp.
Tri-Continental Corporation
Anaconda Wire & Cable Company
American Snuff Company
Bayuk Cigars Incorporated
The United Light & Power Co.
Pullman Incorporated
Ingersoll-Rand Company
Alpha Portland Cement Company
McKesson & Robbins, Incorporated
Chicago Yellow Cab Company
Crucible Steel Company of America
Curtiss-Wright Corporation
Republic Steel Corporation
The Studebaker Corporation
Diamond Match Corporation
General Aviation Corporation
The National Cash Register Co.
Allis-Chalmers Manufacturing Co.
American Stove Company
Collins & Aikman Corporation
Vulcan Detinning Company
The Porto Rican-American Tobacco Company
Mavis Bottling Company of America

Some Important Matters for June, July, August, September and October

This calendar does not purport to cover general taxes or reports to other than state officials, or those we have been officially advised are not required to be filed. *The State Report and Tax Service* maintained by *The Corporation Trust Company System* sends timely notice to attorneys for subscribing corporations of report and tax matters requiring attention from time to time, furnishing information regarding forms, practices and rulings.

ARIZONA—Report to Corporation Commission and Registration Fee due during June.—Domestic and Foreign Corporations.

ARKANSAS—Anti-trust Affidavit due on or before August 1.—Domestic and Foreign Corporations.

Annual Franchise Tax due on or before August 10.—Domestic and Foreign Corporations.

CALIFORNIA—Franchise Tax based on net income. Second installment due on or before September 15.—Domestic and Foreign Corporations.

CONNECTICUT—Income Tax due on or before September 1.—Domestic and Foreign Corporations.

Annual Report due on or before August 15 (if corporation was organized or qualified between July 1 and December 31).—Domestic and Foreign Corporations.

DELAWARE—Annual Franchise Tax due between April 1 and July 1.—Domestic Corporations.

FLORIDA—Annual Report and Fee due on or before July 1.—Domestic and Foreign Corporations.

GEORGIA—Certified Statement for Registration due on or before November 1.— Domestic and Foreign Corporations.

IDAHO—Annual Statement due between July 1 and September 1.—Domestic and Foreign Corporations.

Annual License Tax due between July 1 and September 1. —Domestic and Foreign Corporations.

ILLINOIS—Annual Franchise Tax due on or before July 1, but may be paid up to July 31 without penalty.—Domestic and Foreign Corporations.

INDIANA—Annual Report due within 30 days after June 30.—Domestic and Foreign Corporations.

Annual Report and License Fee to Industrial Board due in July.—Domestic and Foreign Corporations employing 5 or more persons in Indiana.

Quarterly Gross Income Tax Returns and Payments due on or before July 15 and October 15.—Domestic and Foreign Corporations.

IOWA—Annual Report due between July 1 and August 1.—Domestic and Foreign Corporations.

Additional Statement due at the time of filing the Annual Report in July.—Foreign Corporations.

LOUISIANA—Franchise Tax Report and Tax due on or before September 1.—Domestic and Foreign Corporations.

MAINE—Annual Franchise Tax due September 1; delinquent one month later.—Domestic Corporations.

MARYLAND—Franchise Tax due on or before August 1.—Domestic and Foreign Corporations.

MICHIGAN—Annual Report and Franchise Tax due during July or August.—Domestic and Foreign Corporations.

MINNESOTA—Sworn Statement of Capital Stock due on July 1 of each odd-numbered year.—Foreign Corporations.

MISSISSIPPI—Annual Report and Fee to Factory Inspector due in July. —Domestic and Foreign Corporations employing 5 or more persons in Mississippi.

Annual Franchise Tax Report and Tax due on or before July 15.—Domestic and Foreign Corporations.

MISSOURI—Annual Statement, Registration and Anti-Trust Affidavit due during July.—Domestic and Foreign Corporations.

MONTANA—Annual License Tax based on Net Income due on or before June 15.—Domestic and Foreign Corporations.

NEBRASKA—Annual Report and Fee due on or before July 1.—Domestic Corporations.

Annual Report and Fee due during July.—Foreign Corporations.

Annual Statement due on or before September 15.—Foreign Corporations.

NEVADA—Annual List of Officers and Designation and Acceptance of Resident Agent due on or before July 1.—Domestic and Foreign Corporations.

NEW JERSEY—Franchise Tax due in August.—Domestic Corporations.

NEW YORK—Annual Franchise (Income) Tax Return (Form 3IT—Art. 9-A, Tax Law) due on or before July 1.—Domestic and Foreign Business Corporations.

NORTH CAROLINA—Capital Stock Report, to determine amount of franchise tax, due on or before July 1.—Foreign Corporations.

Annual Franchise Tax due on or before October 1, or within 30 days after date of notice, if not mailed prior to September 15. —Domestic and Foreign Corporations.

NORTH DAKOTA—Corporation Report due during July.—Domestic and Foreign Corporations.

OHIO—Annual Franchise Tax due on or before July 15.—Domestic and Foreign Corporations.

OKLAHOMA—Annual Capital Stock Affidavit due between July 1 and August 1.—Foreign Corporations.

Annual License Tax Report and Tax due on or before July 31. —Domestic and Foreign Corporations.

OREGON—Annual License Fee due within 30 days after July 15.—Foreign Corporations.

Annual Report due during June; delinquent August 15.—Domestic and Foreign Corporations.

RHODE ISLAND—Corporate Excess Tax due July 1; delinquent after July 15.—Domestic and Foreign Corporations.

Semi-Annual Report to Chief Factory Inspector due in October and April.—Domestic and Foreign Corporations employing 5 or more persons in Rhode Island.

TENNESSEE—Annual Report and Franchise Tax due on or before July 1.—Domestic and Foreign Corporations.

UNITED STATES—Second and Third Installments of Income Tax due June 15 and September 15, respectively.—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.

UTAH—Annual Report to the Industrial Commission due in July. —Domestic and Foreign Corporations employing 3 or more persons in Utah.

WASHINGTON—License Fee due on or before July 1.—Domestic and Foreign Corporations.

WEST VIRGINIA—License Tax Statement due on or before July 1.—Domestic Corporations.

Annual License Tax due on or before July 1.—Domestic and Foreign Corporations.

Fee to State Auditor as Attorney-in-Fact due on or before July 1.—Foreign Corporations and those Domestic Corporations whose principal places of business or chief works are located in other states.

WYOMING—Annual Statement and License Tax due on or before July 1.—Domestic and Foreign Corporations.

The Corporation Trust Company's Supplementary Literature

In connection with the various departments of its business The Corporation Trust Company publishes the following supplementary pamphlets and forms, any of which it is always glad to send without charge to readers of The Journal:

Securities Act of 1933—Complete text of this important new law which constitutes in effect a National Blue Sky Law.

Special Report—The Case Against Corporate Representation by Business Employes. Specific experiences of different corporations with the handling by untrained corporate representatives of such matters as service of process, notices of taxes due, filing of corporation reports, etc.

Amendments to Delaware Corporation Law, 1933. Presents the complete text of the 1933 amendments to Chapter 65 of the Revised Code, all new matters being shown in italics, and repealed matter in brackets, so a complete picture is conveyed of the changes effected, while explanatory comments show the purpose and result of each change.

What Constitutes Doing Business. (Revised to March 1, 1933.) A 314-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business." The digests are arranged by state, but a Table of Cases and a Topical Index make them accessible also by either case name or topic.

Amateur Corporate Representation. A booklet dealing with some of the weaknesses of placing a company's statutory representation in the hands of business employes or others not trained in the matters involved.

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation, completely revised to reflect the changes made by the amendments of 1931.

Incorporation in Canada Under the Dominion Act. Explains the procedure for incorporation of Canadian companies, the requirements, taxes, maintenance of office, etc., and all the special features of the Dominion Companies Act.

When Corporations Cross the Line. A simple explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.

Questionnaire on Business Outside State of Organization. This is a form for attorney's use in determining when a corporation should be qualified. The questions are those which will usually bring out the points necessary to be considered.

Why a Transfer Agent? The question of why corporations, even those of small capitalization or with inactive or closely held stock, are safer when their stock records are in the hands of an experienced transfer agent is answered in this pamphlet by actual incidents from the experiences of different corporations.